

1.9.1 Tax Cuts and Jobs Act of 2017 (Public Law 115-97)

Section 20001(c)(3) of PL 115-97 states:

SURFACE DEVELOPMENT—In administering this section, the Secretary shall authorize up to 2,000 surface acres of Federal land on the Coastal Plain to be covered by production and support facilities (including airstrips and any area covered by gravel berms or piers for support of pipelines) during the term of the leases under the oil and gas program under this section.

The BLM interprets this provision of PL 115-97 as limiting to 2,000 the total number of surface acres of *all* Federal land across the Coastal Plain, regardless of whether such land is leased, which may be covered by production and support facilities *at any given time*. BLM is applying this acreage limit to non-leased Federal lands because Section 20001(c)(2) of PL 115-97 provides for the issuance of rights-of-way (ROWs) or easements across the Coastal Plain regardless of lease status and since in some cases production and support facilities (e.g., pipelines) may be constructed pursuant to such ROWs or easements. BLM is applying this limit to the total acreage of production and support facilities existing at any given moment in time, as opposed to the cumulative total acreage of production and support facilities that may ever exist, because the language “during the term of the leases” in Section 20001(a)(3) indicates a temporal limit was intended by Congress. Under this interpretation the reclaimed acreage of Federal land formerly containing production and support facilities would no longer count towards the 2,000-acre limit.

The BLM interprets this limitation to generally refer to acres of land directly occupied by facilities that are primarily used for the purpose of development, production, and transportation of oil and gas in and from the Coastal Plain. In applying that standard, 1) “facility” is given its ordinary dictionary definition, which is something that is built, installed, or established to serve a particular purpose; here, the development, production, and transportation of oil and gas in and from the Coastal Plain; 2) the limitation does not apply to surface disturbance indirectly related to or resulting from those facilities, as those surface acres are not “covered by” the facilities themselves; and 3) given the explicit language of PL 115-97 relating to “piers” for supporting pipelines, the limitation applies only to those portions of oil and gas facilities that actually touch the land’s surface. Thus, BLM interprets the types of “production and support” facilities that will count toward the 2,000-acre limit as including any type of gravel or other fill constructed facility which touches the land’s surface, to include: gravel pads used for processing facilities (including wells), production facilities, or pump or compressor stations; gravel airstrips or roads; and any other area covered by gravel berms or piers for support of pipelines. Examples of types of facilities or disturbance that will not count toward the 2,000-acre limit include facilities constructed with snow or ice (e.g., ice roads/pads) and the portion of facilities that do not touch the land’s surface (e.g., elevated pipelines). Facilities constructed with snow or ice have a fleeting existence, and thus this aspect of BLM’s interpretation is consistent with the temporal limit intended by Congress. Moreover, inclusion of such facilities would make Congress’s clear purpose – establishment of an oil and gas program on the Coastal Plain – impracticable. In addition, the BLM interprets “production and support facilities” to exclude gravel mines given that they supply raw materials for construction of oil and gas facilities but are not themselves oil and gas facilities any more than are mills that supply steel for construction of pipelines and other facilities.

The BLM employs this interpretation of Section 20001(c)(3) of PL 115-97 as an assumption in each of the action alternatives analyzed in the EIS. This interpretation limits surface use in any instance where the construction of facilities substantially disturbs the tundra surface but does not restrict the use of winter snow/ice surfaces which melt away each summer and leave the tundra surface largely undisturbed. It also